

COMMITTEE SUBSTITUTE

FOR

**H. B. 3099**

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(BY DELEGATES VARNER, KOMINAR, WHITE, PETHTEL,  
FERRO, ENNIS, FERNS, SKAFF, STORCH, GIVENS AND NELSON)

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(Originating in the Committee on Finance)  
[February 23, 2011]

A BILL to amend and reenact §11-6F-2 and §11-6F-3 of the Code of West Virginia, 1931, as amended; to amend and reenact §11-13Q-20 of said code; to amend and reenact §11-13R-3 of said code; to amend and reenact §11-13S-3 of said code; to amend and reenact §11-15-8d of said code; and to amend and reenact §24-2F-3 of said code, all relating generally to the tax treatment of manufacturing entities generally; amending definition of

manufacturing for purposes of special method for appraising qualified capital additions to manufacturing facilities for property tax purposes; providing new rules for treatment of certified capital addition property; amending definition of research and development purposes of strategic research and development tax credit; amending definition of manufacturing for purposes of manufacturing investment tax credit; providing additional exception to limitation on right to assert sales and use tax exemptions; modifying meaning of natural gas for purposes of alternative and renewable energy portfolio standard act; and requiring report on impact of act.

*Be it enacted by the Legislature of West Virginia:*

That §11-6F-2 and §11-6F-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §11-13Q-20 of said code be amended and reenacted; that §11-13R-3 of said code be amended and reenacted; that §11-13S-3 of said code be amended and reenacted; that §11-15-8d of said code be amended and reenacted; and that §24-2F-3 of said code be amended and reenacted, all to read as follows:

**CHAPTER 11. TAXATION.**

**ARTICLE 6F. SPECIAL METHOD FOR APPRAISING  
QUALIFIED CAPITAL ADDITIONS TO  
MANUFACTURING FACILITIES.**

**§11-6F-2. Definitions.**

1 As used in this article, the term:

2 (a) “Certified capital addition property” means all real  
3 property and personal property included within or to be  
4 included within a qualified capital addition to a  
5 manufacturing facility that has been certified by the State Tax  
6 Commissioner in accordance with section four of this article:  
7 *Provided*, That airplanes and motor vehicles licensed by the  
8 Division of Motor Vehicles shall in no event constitute  
9 certified capital addition property: *Provided, however, That*  
10 no real property purchased, leased, constructed, located or  
11 installed on or after January 1, 2012, may be included in the  
12 measure of certified capital addition property.

13 (b) “Manufacturing” means any business activity  
14 classified as having a sector identifier, consisting of the first  
15 two digits of the six-digit North American Industry

16 Classification System code number of thirty-one, thirty-two  
17 or thirty-three or the six digit code number 211112.

18 (b) (c) “Manufacturing facility” means any factory, mill,  
19 chemical plant, refinery, warehouse, building or complex of  
20 buildings, including land on which it is located, and all  
21 machinery, equipment, improvements and other real property  
22 and personal property located at or within the facility used in  
23 connection with the operation of the facility in a  
24 manufacturing business.

25 (c) (d) “Personal property” means all property specified  
26 in subdivision (q), section ten, article two, chapter two of this  
27 code and includes, but is not limited to, furniture, fixtures,  
28 machinery and equipment, pollution control equipment,  
29 computers and related data processing equipment, spare parts  
30 and supplies.

31 (d) (e) “Qualified capital addition to a manufacturing  
32 facility” means all real property and personal property, the  
33 combined original cost of ~~all of the property~~ which exceeds  
34 \$50 million to be constructed, located or installed at or within

35 two miles of a manufacturing facility owned or operated by  
36 the person making the capital addition that has a total original  
37 cost before the capital addition of at least \$100 million.  
38 *Provided, That if beginning on and after January 1, 2012,*  
39 *“qualified capital addition to a manufacturing facility” means*  
40 *only personal property, the combined original cost of which*  
41 *exceeds \$10 million to be constructed, located or installed on*  
42 *or after January 1, 2012, at or within two miles of a*  
43 *manufacturing facility owned or operated by the person*  
44 *making the capital addition that has a total original cost*  
45 *immediately before the capital addition of at least \$20 million*  
46 *dollars. No real property purchased, leased, constructed,*  
47 *located or installed on or after January 1, 2012, may be*  
48 *included in the measure of the qualified capital addition to a*  
49 *manufacturing facility. If the capital addition is made in a*  
50 *steel, chemical or polymer alliance zone as designated from*  
51 *time-to-time by executive order of the Governor, then the*  
52 *person making the capital addition may for purposes of*  
53 *satisfying the requirements of this subsection join in a*

54 multiparty project with a person owning or operating a  
55 manufacturing facility that has a total original cost  
56 immediately before the capital addition of at least \$100  
57 million if the capital addition creates additional production  
58 capacity of existing or related products or feedstock or  
59 derivative products respecting the manufacturing facility,  
60 consists of a facility used to store, handle, process or produce  
61 raw materials for the manufacturing facility, consists of a  
62 facility used to store, handle or process natural gas to produce  
63 fuel for the generation of steam or electricity for the  
64 manufacturing facility, or consists of a facility that generates  
65 steam or electricity for the manufacturing facility, including  
66 but not limited to a facility that converts coal to a gas or  
67 liquid for the manufacturing facility's use in heating,  
68 manufacturing or generation of electricity: *Provided, That*  
69 with relation to multiparty projects entailing personal  
70 property, the combined original cost of which exceeds \$10  
71 million, to be constructed, located or installed on or after  
72 January 1, 2012, the total original cost of the manufacturing

73 facility immediately before the capital addition must be at  
74 least \$20 million.

75 (e) (f) “Real property” means all property specified in  
76 subdivision (p), section ten, article two, chapter two of this  
77 code and includes, but is not limited to, lands, buildings and  
78 improvements on the land such as sewers, fences, roads,  
79 paving and leasehold improvements.

**§11-6F-3. Tax treatment of certified capital addition property.**

1 Notwithstanding any other provisions of law, the value of  
2 certified capital addition property, for purposes of ad valorem  
3 property taxation under this chapter, ~~shall be~~ is its salvage  
4 value, which for purposes of this article is five percent of the  
5 certified capital addition property’s original cost. For capital  
6 additions certified on or after July 1, 2011, the value of the  
7 land before any improvements shall be subtracted from the  
8 value of the capital addition and the unimproved land value  
9 shall not be given salvage value treatment.

**ARTICLE 13Q. ECONOMIC OPPORTUNITY TAX CREDIT.**

**§11-13Q-20. Tax credit review and accountability.**

1 (a) Beginning on February 1, 2006 and every third year  
2 thereafter, the commissioner shall submit to the Governor,  
3 the President of the Senate and the Speaker of the House of  
4 Delegates a tax credit review and accountability report  
5 evaluating the cost effectiveness of the economic opportunity  
6 credit during the most recent three-year period for which  
7 information is available. The criteria to be evaluated shall  
8 include, but not be limited to, for each year of the three-year  
9 period:

- 10 (1) The numbers of taxpayers claiming the credit;  
11 (2) The net number of new jobs created by all taxpayers  
12 claiming the credit;  
13 (3) The cost of the credit;  
14 (4) The cost of the credit per new job created; and  
15 (5) Comparison of employment trends for an industry and  
16 for taxpayers within the industry that claim the credit.

17 (b) Taxpayers claiming the credit shall provide any  
18 information the Tax Commissioner may require to prepare  
19 the report: *Provided*, That the information provided is



20 subject to the confidentiality and disclosure provisions of  
21 sections five-d and five-s, article ten of this chapter.

22 (c) In addition to the report required by subsection (a) of  
23 this section, on or before February 1, 2013, the commissioner,  
24 in consultation with the Department of Commerce, the  
25 Department of Transportation and the Department of  
26 Environmental Protection shall submit to the Governor, the  
27 President of the Senate and the Speaker of the House of  
28 Delegates a report of the impact of all the tax credits and  
29 other economic incentives provided in the act of the  
30 Legislature which amended and reenacted this section during  
31 2011 upon economic development in this state, including but  
32 not limited to the creation of jobs in this state, upon the  
33 state's infrastructure, including but not limited to the need for  
34 construction or maintenance of the roads and highways of the  
35 state, upon the natural resources of the state, and upon public  
36 and private property interests in the state.

**ARTICLE 13R. STRATEGIC RESEARCH AND  
DEVELOPMENT TAX CREDIT.**

**§11-13R-3. Definitions.**

1 (a) *General.* -- When used in this article or in the  
2 administration of this article, terms defined in subsection (b)  
3 of this section have the meanings ascribed to them by this  
4 section unless a different meaning is clearly required by  
5 either the context in which the term is used or by specific  
6 definition in this article.

7 (b) *Terms defined.* --

8 (1) “Base amount” means:

9 (A) The average annual combined qualified research and  
10 development expenditure for the three taxable years  
11 immediately preceding the taxable year for which a credit is  
12 claimed under this article;

13 (B) For a taxpayer that has filed a tax return under article  
14 twenty-three of this chapter for fewer than three but at least  
15 one prior taxable year, determined on the basis of all filings  
16 by the taxpayer’s controlled group, the base amount is the  
17 average annual combined qualified research and development  
18 expenditure for the number of immediately preceding taxable

19 years, other than short taxable years, during which the  
20 taxpayer has filed a tax return under article twenty-three of  
21 this chapter; or

22 (C) For a taxpayer that has not filed a tax return under  
23 article twenty-three of this chapter for at least one taxable  
24 year, determined on the basis of all filings by the taxpayer's  
25 controlled group, the base amount is zero.

26 (2) "Commissioner" and "Tax Commissioner" are used  
27 interchangeably herein and mean the Tax Commissioner of  
28 the State of West Virginia or his or her delegate.

29 (3) "Controlled group" means a controlled group as  
30 defined by section 1563 of the Internal Revenue Code of  
31 1986, as amended.

32 (4) "Corporation" means any corporation, limited liability  
33 company, joint-stock company or association and any  
34 business conducted by a trustee or trustees wherein interest  
35 or ownership is evidenced by a certificate of interest or  
36 ownership or similar written instrument.

37 (5) "Delegate" in the phrase "or his or her delegate,"  
38 when used in reference to the Tax Commissioner, means any

39 officer or employee of the State Tax Division of the  
40 Department of Tax and Revenue duly authorized by the Tax  
41 Commissioner directly, or indirectly by one or more  
42 redelegations of authority, to perform the functions  
43 mentioned or described in this article.

44 (6) “Eligible taxpayer” means any person that is subject  
45 to the tax imposed by article twenty-three or article twenty-  
46 four of this chapter that is engaged in qualified research and  
47 development that has paid or incurred investment in qualified  
48 research and development credit property or that has paid or  
49 incurred qualified research and development expenses as  
50 defined in section four of this article. In the case of a sole  
51 proprietorship subject to neither the tax imposed by article  
52 twenty-three nor the tax imposed by article twenty-four, the  
53 term “eligible taxpayer” means any sole proprietor who is  
54 subject to the tax imposed by article twenty-one of this  
55 chapter and who is engaged in qualified research and  
56 development that has paid or incurred investment in qualified  
57 research and development credit property or that has paid or

58 incurred qualified research and development expenses as  
59 defined in section four of this article.

60 (7) “Partnership” includes a syndicate, group, pool, joint  
61 venture or other unincorporated organization through or by  
62 means of which any business, financial operation or venture  
63 is carried on, and which is not a trust or estate, a corporation  
64 or a sole proprietorship. The term “partner” includes a  
65 member in such a syndicate, group, pool, joint venture or  
66 other organization.

67 (8) “Person” includes any natural person, corporation,  
68 limited liability company or partnership.

69 (9) “Qualified research and development credit property”  
70 means depreciable property purchased for the conduct of  
71 qualified research and development.

72 (10) “Research and development” means systematic  
73 scientific, engineering or technological study and  
74 investigation in a field of knowledge in the physical,  
75 computer or software sciences often involving the  
76 formulation of hypotheses and experimentation for the

77 purpose of revealing new facts, theories or principles or  
78 increasing scientific knowledge which may reveal the basis  
79 for new or enhanced products, equipment or manufacturing  
80 processes.

81 (A) Research and development includes, but is not  
82 limited to, design, refinement and testing of prototypes of  
83 new or improved products ~~or design or equipment or the~~  
84 design, refinement and testing of manufacturing processes  
85 before commercial sales relating thereto have begun. For  
86 purposes of this section, commercial sales includes, but is not  
87 limited to, sales of prototypes or sales for market testing.

88 (B) Research and development does not include:

89 (i) Market research;

90 (ii) Sales research;

91 (iii) Efficiency surveys;

92 (iv) Consumer surveys;

93 (v) Product market testing;

94 (vi) Product testing by product consumers or through  
95 consumer surveys for evaluation of consumer product  
96 performance or consumer product usability;

- 97 (vii) The ordinary testing or inspection of materials or  
98 products for quality control; ~~(quality control testing);~~
- 99 (viii) Management studies;
- 100 (ix) Advertising;
- 101 (x) Promotions;
- 102 (xi) The acquisition of another's patent, model,  
103 production or process or investigation or evaluation of the  
104 value or investment potential related thereto;
- 105 (xii) Research in connection with literary, historical or  
106 similar activities;
- 107 (xiii) Research in the social sciences, economics,  
108 humanities or psychology and other nontechnical activities;  
109 and
- 110 (xiv) The providing of sales services or any other service,  
111 whether technical service or nontechnical service.
- 112 (11) "Related person" means:
- 113 (A) A corporation, limited liability company, partnership,  
114 association or trust controlled by the taxpayer;

115 (B) An individual, corporation, limited liability company,  
116 partnership, association or trust that is in control of the  
117 taxpayer;

118 (C) A corporation, limited liability company, partnership,  
119 association or trust controlled by an individual, corporation,  
120 partnership, association or trust that is in control of the  
121 taxpayer; or

122 (D) A member of the same controlled group as the  
123 taxpayer.

124 For purposes of this article, “control”, with respect to a  
125 corporation, means ownership, directly or indirectly, of stock  
126 possessing fifty percent or more of the total combined voting  
127 power of all classes of the stock of the corporation entitled to  
128 vote. “Control”, with respect to a trust, means ownership,  
129 directly or indirectly, of fifty percent or more of the  
130 beneficial interest in the principal or income of the trust. The  
131 ownership of stock in a corporation, of a capital or profits  
132 interest in a partnership or association or of a beneficial  
133 interest in a trust is determined in accordance with the rules



134 for constructive ownership of stock provided in section  
135 267(c) of the United States Internal Revenue Code of 1986,  
136 as amended, other than paragraph (3) of that section.

137 (12) “Taxpayer” means any person subject to the tax  
138 imposed by article twenty-three or twenty-four of this chapter  
139 or both. In the case of a sole proprietorship subject to neither  
140 the tax imposed by article twenty-three nor the tax imposed  
141 by article twenty-four, the term “taxpayer” means any sole  
142 proprietor who is subject to the tax imposed by article  
143 twenty-one of this chapter.

144 (13) “This code” means the Code of West Virginia, 1931,  
145 as amended.

146 (14) “This state” means the State of West Virginia.

**ARTICLE 13S. MANUFACTURING INVESTMENT TAX  
CREDIT.**

**§11-13S-3. Definitions.**

1 (a) Any term used in this article has the meaning ascribed  
2 by this section unless a different meaning is clearly required  
3 by the context of its use or by definition in this article.

4 (b) For purpose of this article, the term:

5 (1) “Eligible taxpayer” means an industrial taxpayer who  
6 purchases new property for the purpose of industrial  
7 expansion or for the purpose of industrial revitalization of an  
8 existing industrial facility in this state.

9 (2) “Industrial expansion” means capital investment in a  
10 new or expanded industrial facility in this state.

11 (3) “Industrial facility” means any factory, mill, plant,  
12 refinery, warehouse, building or complex of buildings located  
13 within this state, including the land on which it is located,  
14 and all machinery, equipment and other real and tangible  
15 personal property located at or within the facility primarily  
16 used in connection with the operation of the manufacturing  
17 business.

18 (4) “Industrial revitalization” or “revitalization” means  
19 capital investment in an industrial facility located in this state  
20 to replace or modernize buildings, equipment, machinery and  
21 other tangible personal property used in connection with the  
22 operation of the facility in an industrial business of the

23 taxpayer including the acquisition of any real property  
24 necessary to the industrial revitalization.

25 (5) “Industrial taxpayer” means any taxpayer who is  
26 primarily engaged in a manufacturing business.

27 (6) “Manufacturing” means any business activity  
28 classified as having a sector identifier, consisting of the first  
29 two digits of the six-digit North American Industry  
30 Classification System code number, of thirty-one, thirty-two  
31 or thirty-three or the six digit code number 211112.

32 (7) “Property purchased for manufacturing investment”  
33 means real property, and improvements thereto, and tangible  
34 personal property but only if the property was constructed or  
35 purchased on or after ~~the first day of January, two thousand~~  
36 ~~three, January 1, 2003,~~ for use as a component part of a new,  
37 expanded or revitalized industrial facility. This term includes  
38 only that tangible personal property with respect to which  
39 depreciation, or amortization in lieu of depreciation, is  
40 allowable in determining the federal income tax liability of  
41 the industrial taxpayer, that has a useful life, at the time the

42 property is placed in service or use in this state, of four years  
43 or more. Property acquired by written lease for a primary  
44 term of ten years or longer, if used as a component part of a  
45 new or expanded industrial facility, is included within this  
46 definition.

47 (A) "Property purchased for manufacturing investment"  
48 does not include:

49 (i) Repair costs, including materials used in the repair,  
50 unless for federal income tax purposes, the cost of the repair  
51 must be capitalized and not expensed;

52 (ii) Motor vehicles licensed by the department of motor  
53 vehicles;

54 (iii) Airplanes;

55 (iv) Off-premises transportation equipment;

56 (v) Property which is primarily used outside this state;  
57 and

58 (vi) Property which is acquired incident to the purchase  
59 of the stock or assets of an industrial taxpayer which property  
60 was or had been used by the seller in his or her industrial

61 business in this state or in which investment was previously  
62 the basis of a credit against tax taken under any other article  
63 of this chapter.

64 (B) Purchases or acquisitions of land or depreciable  
65 property qualify as purchases of property purchased for  
66 manufacturing investment for purposes of this article only if:

67 (i) The property is not acquired from a person whose  
68 relationship to the person acquiring it would result in the  
69 disallowance of deductions under section 267 or 707(b) of  
70 the United States Internal Revenue Code of 1986, as  
71 amended;

72 (ii) The property is not acquired from a related person or  
73 by one component member of a controlled group from  
74 another component member of the same controlled group.  
75 The Tax Commissioner may waive this requirement if the  
76 property was acquired from a related party for its then fair  
77 market value; and

78 (iii) The basis of the property for federal income tax  
79 purposes, in the hands of the person acquiring it, is not

80 determined, in whole or in part, by reference to the federal  
81 adjusted basis of the property in the hands of the person from  
82 whom it was acquired or under Section 1014(e) of the United  
83 States Internal Revenue Code of 1986, as amended.

84 (8) “Qualified manufacturing investment” means that  
85 amount determined under section five of this article as  
86 qualified manufacturing investment.

87 (9) “Taxpayer” means any person subject to any of the  
88 taxes imposed by article thirteen-a, twenty-three or twenty-  
89 four of this chapter or any combination of those articles of  
90 this chapter.

**ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.**

**§11-15-8d. Limitations on right to assert exemptions.**

1 (a) Persons who perform “contracting” as defined in  
2 section two of this article or persons acting in an agency  
3 capacity may not assert any exemption to which the  
4 purchaser of such contracting services or the principal is  
5 entitled. Any statutory exemption to which a taxpayer may  
6 be entitled ~~shall be~~ is invalid unless the tangible personal

7 property or taxable service is actually purchased by such  
8 taxpayer and is directly invoiced to and paid by such  
9 taxpayer. This section ~~shall not~~ does not apply to purchases  
10 by an employee for his or her employer, purchases by a  
11 partner for his or her partnership or purchases by a duly  
12 authorized officer of a corporation, or unincorporated  
13 organization, for his or her corporation or unincorporated  
14 organization so long as the purchase is invoiced to and paid  
15 by the employer, partnership, corporation or unincorporated  
16 organization.

17 (b) *Transition rule.* -- This section ~~shall not~~ does not  
18 apply to purchases of tangible personal property or taxable  
19 services in fulfillment of a purchasing agent or procurement  
20 agent contract executed and legally binding on the parties  
21 thereto prior to September 15, 1999. ~~Provided, That~~ This  
22 transition rule ~~shall not~~ does not apply to any purchases of  
23 tangible personal property or taxable services made under  
24 such a contract after August 31, 1991 and this transition rule  
25 ~~shall not~~ does not apply if the primary purpose of the

26 purchasing agent or procurement agent contract was to avoid  
27 payment of consumers sales and use taxes. ~~However,~~  
28 Effective July 1, 2007, this section ~~shall not~~ does not apply  
29 to purchases of services, machinery, supplies or materials,  
30 except gasoline and special fuel, to be directly used or  
31 consumed in the construction, alteration, repair or  
32 improvement of a new or existing building or structure by a  
33 person performing “contracting”, as defined in section two of  
34 this article, if the purchaser of the “contracting” services  
35 would be entitled to claim the refundable exemption under  
36 subdivision (2), subsection (b), section nine of this article had  
37 it purchased the services, machinery, supplies or materials.  
38 Effective July 1, 2009, this section ~~shall not~~ does not apply  
39 to purchases of services, computers, servers, building  
40 materials and tangible personal property, except purchases of  
41 gasoline and special fuel, to be installed into a building or  
42 facility or directly used or consumed in the construction,  
43 alteration, repair or improvement of a new or existing  
44 building or structure by a person performing “contracting”,



45 as defined in section two of this article, if the purchaser of the  
46 “contracting” services would be entitled to claim the  
47 exemption under subdivision (7), subsection (a), section nine-  
48 h of this article. Effective July 1, 2011, this section does not  
49 apply to purchases of services, machinery, supplies or  
50 materials, except gasoline and special fuel, to be directly used  
51 or consumed in the construction, alteration, repair or  
52 improvement of a new or existing natural gas compressor  
53 station or gas transmission line having a diameter of twenty  
54 inches or more by a person performing “contracting”, as  
55 defined in section two of this article, if the purchaser of the  
56 “contracting” services would be entitled to claim the  
57 refundable exemption under subdivision (2), subsection (b),  
58 section nine of this article had it purchased the services,  
59 machinery, supplies or materials.

## **CHAPTER 24. PUBLIC SERVICE COMMISSION.**

### **ARTICLE 2F. ALTERNATIVE AND RENEWABLE ENERGY PORTFOLIO STANDARD.**

#### **§24-2F-3. Definitions.**

1 Unless the context clearly requires a different meaning,  
2 as used in this article:

3 (1) “Advanced coal technology” means a technology that  
4 is used in a new or existing energy generating facility to  
5 reduce airborne carbon emissions associated with the  
6 combustion or use of coal and includes, but is not limited to,  
7 carbon dioxide capture and sequestration technology,  
8 supercritical technology, advanced supercritical technology  
9 as that technology is determined by the Public Service  
10 Commission, ultrasupercritical technology and pressurized  
11 fluidized bed technology and any other resource, method,  
12 project or technology certified by the commission as  
13 advanced coal technology.

14 (2) “Alternative and renewable energy portfolio standard”  
15 or “portfolio standard” means a requirement in any given  
16 year that requires an electric utility to own credits in an  
17 amount equal to a certain percentage of electric energy sold  
18 in the preceding calendar year by the electric utility to retail  
19 customers in this state.

20 (3) “Alternative energy resources” means any of the  
21 following resources, methods or technologies for the  
22 production or generation of electricity:

23 (A) Advanced coal technology;

24 (B) Coal bed methane;

25 (C) Natural gas, including any component of raw natural  
26 gas;

27 (D) Fuel produced by a coal gasification or liquefaction  
28 facility;

29 (E) Synthetic gas;

30 (F) Integrated gasification combined cycle technologies;

31 (G) Waste coal;

32 (H) Tirederived fuel;

33 (I) Pumped storage hydroelectric projects; and

34 (J) Any other resource, method, project or technology  
35 certified as an alternative energy resource by the Public  
36 Service Commission.

37 (4) “Alternative and renewable energy resource credit” or  
38 “credit” means a tradable instrument that is used to establish,

39 verify and monitor the generation of electricity from  
40 alternative and renewable energy resource facilities, energy  
41 efficiency or demand-side energy initiative projects or  
42 greenhouse gas emission reduction or offset projects.

43 (5) “Alternative energy resource facility” means a facility  
44 or equipment that generates electricity from alternative  
45 energy resources.

46 (6) “Commission” or “Public Service Commission”  
47 means the Public Service Commission of West Virginia as  
48 continued pursuant to section three, article one of this  
49 chapter.

50 (7) “Customer-generator” means an electric retail  
51 customer who owns and operates a customer-sited generation  
52 project utilizing an alternative or renewable energy resource  
53 or a net metering system in this state.

54 (8) “Electric utility” means any electric distribution  
55 company or electric generation supplier that sells electricity  
56 to retail customers in this state. Unless specifically provided  
57 for otherwise, for the purposes of this article, the term

58 “electric utility” may not include rural electric cooperatives,  
59 municipally-owned electric facilities or utilities serving less  
60 than thirty thousand residential electric customers in West  
61 Virginia.

62 (9) “Energy efficiency or demand-side energy initiative  
63 project” means a project in this state that promotes customer  
64 energy efficiency or the management of customer  
65 consumption of electricity through the implementation of:

66 (A) Energy efficiency technologies, equipment,  
67 management practices or other strategies utilized by  
68 residential, commercial, industrial, institutional or  
69 government customers that reduce electricity consumption by  
70 those customers;

71 (B) Load management or demand response technologies,  
72 equipment, management practices, interruptible or curtailable  
73 tariffs, energy storage devices or other strategies in  
74 residential, commercial, industrial, institutional and  
75 government customers that shift electric load from periods of  
76 higher demand to periods of lower demand;

77 (C) Industrial by-product technologies consisting of the  
78 use of a by-product from an industrial process, including, but  
79 not limited to, the reuse of energy from exhaust gases or  
80 other manufacturing by-products that can be used in the  
81 direct production of electricity at the customer's facility;

82 (D) Customer-sited generation, demand-response, energy  
83 efficiency or peak demand reduction capabilities, whether  
84 new or existing, that the customer commits for integration  
85 into the electric utility's demand-response, energy efficiency  
86 or peak demand reduction programs; or

87 (E) Infrastructure and modernization projects that help  
88 promote energy efficiency, reduce energy losses or shift load  
89 from periods of higher demand to periods of lower demand,  
90 including the modernization of metering and  
91 communications, (also known as "smart grid"), distribution  
92 automation, energy storage, distributed energy resources and  
93 investments to promote the electrification of transportation.

94 (10) "Greenhouse gas emission reduction or offset  
95 project" means a project to reduce or offset greenhouse gas

96 emissions from sources in this state other than the electric  
97 utility's own generating and energy delivery operations.  
98 Greenhouse gas emission reduction or offset projects include,  
99 but are not limited to:

100 (A) Methane capture and destruction from landfills, coal  
101 mines or farms;

102 (B) Forestation, afforestation or reforestation; and

103 (C) Nitrous oxide or carbon dioxide sequestration  
104 through reduced fertilizer use or no-till farming.

105 (11) "Net metering" means measuring the difference  
106 between electricity supplied by an electric utility and  
107 electricity generated from an alternative or renewable energy  
108 resource facility owned or operated by an electric retail  
109 customer when any portion of the electricity generated from  
110 the alternative or renewable energy resource facility is used  
111 to offset part or all of the electric retail customer's  
112 requirements for electricity.

113 (12) "Reclaimed surface mine" means a surface mine, as  
114 that term is defined in section three, article three, chapter

115 twenty-two of this code, that is reclaimed or is being  
116 reclaimed in accordance with state or federal law.

117 (13) “Renewable energy resource” means any of the  
118 following resources, methods, projects or technologies for the  
119 production or generation of electricity:

120 (A) Solar photovoltaic or other solar electric energy;

121 (B) Solar thermal energy;

122 (C) Wind power;

123 (D) Run of river hydropower;

124 (E) Geothermal energy, which means a technology by  
125 which electricity is produced by extracting hot water or steam  
126 from geothermal reserves in the earth’s crust to power steam  
127 turbines that drive generators to produce electricity;

128 (F) Biomass energy, which means a technology by which  
129 electricity is produced from a nonhazardous organic material  
130 that is available on a renewable or recurring basis, including  
131 pulp mill sludge;

132 (G) Biologically derived fuel including methane gas,  
133 ethanol or biodiesel fuel;



134 (H) Fuel cell technology, which means any  
135 electrochemical device that converts chemical energy in a  
136 hydrogen-rich fuel directly into electricity, heat and water  
137 without combustion;

138 (I) Recycled energy, which means useful thermal,  
139 mechanical or electrical energy produced from: (i) Exhaust  
140 heat from any commercial or industrial process; (ii) waste  
141 gas, waste fuel or other forms of energy that would otherwise  
142 be flared, incinerated, disposed of or vented; and (iii)  
143 electricity or equivalent mechanical energy extracted from a  
144 pressure drop in any gas, excluding any pressure drop to a  
145 condenser that subsequently vents the resulting heat; and

146 (J) Any other resource, method, project or technology  
147 certified by the commission as a renewable energy resource.

148 (14) “Renewable energy resource facility” means a  
149 facility or equipment that generates electricity from  
150 renewable energy resources.

151 (15) “Waste coal” means a technology by which  
152 electricity is produced by the combustion of the by-product,  
153 waste or residue created from processing coal, such as gob.